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Trial

Rept.

IMPORTANT CASE OF
ALLEGED MAL-PRACTICE:

CHARLES M. STEELE, BY HIS NEXT FRIEND, MARIA STEELE, *Plaintiff*,
Against
R. S. NEWTON, M. D., *Defendant*.

TRIED IN THE SUPERIOR COURT OF CINCINNATI, NOVEMBER TERM, 1856.

JUDGE O. M. SPENCER, PRESIDING.

1856

IMPORTANT CASE OF

ALLEGED MAL-PRACTICE

N. B. The Report of the Testimony, as contained in the following pages, was corrected by the Surgeons, who were examined as experts, themselves.

R. S. NEWTON, M. D., Defendant.

TRIED IN THE SUPREME COURT OF GEORGIA, NOVEMBER TERM, 1881.

JUDGE O. W. STEWART, PRESIDING.

CASE OF ALLEGED MAL-PRACTICE.

Suits to recover damages in cases of alleged mal-practice have greatly multiplied within the last few years; yet patients renew them, notwithstanding the common failure to enrich themselves at the expense of the surgeon. The experience of those who have made such attempts have been altogether inadequate to satisfy the morbid desire to collect damages from practitioners, and legal gentlemen as readily advise the institution of suits as though it had been held by the civil code, that the surgeon warranted, in every case, to restore a limb or joint to its normal condition. Every practitioner, and especially every surgeon, is deeply interested in such medico-legal questions, and each does only a duty to the profession when he reports in full, such cases as may come under his knowledge. The case in question is one of considerable interest, as well as importance, and the decision may be of service to other practitioners who shall be the defendants in future mal-practice cases.

On the 7th of July, 1856, the following petition was filed in the Clerk's Office of the Superior Court of Cincinnati:

In the Superior Court of Cincinnati.

CHARLES M. STEELE, an infant, by his next friend, MARIA STEELE, plaintiff, against R. S. NEWTON, M.D., defendant. }

Charles M. Steele, by his next friend, Maria Steele, says: That he, the plaintiff, fell on Friday, the twenty-second day of September, A. D., 1854, from a window in the "Methodist Book Concern," Cincinnati, and fractured the lower extremity of the humerus of his, the plaintiff's, arm, the fracture including the upper part of the condyloid ridges.

And the plaintiff further says: That the defendant, at the time aforesaid, exercising and following the art and profession of a surgeon and physician, was employed by the plaintiff, for a reasonable reward to be therefor paid by the plaintiff, to set and exercise due care in curing the said arm of the plaintiff; that the defendant so carelessly, negligently, and unskillfully treated the said fractured arm of the plain-

tiff, and by and through the mere negligence, unskillfulness and default of the defendant, in that behalf, the said arm of the plaintiff was deformed, partially paralyzed and rendered entirely useless; that a serious injury has been done to the median nerve of the said arm, resulting in an impaired circulation and sensibility; that there is an atrophied condition of the fore arm, and an arrest of the growth of bones; that there is permanent contraction of the flexor muscles of the fingers; that the wrist joint has received an abducted direction, and that the plaintiff has been otherwise injured.

Plaintiff says, that by and through the negligence and unskillfulness aforesaid of the defendant, he has sustained damages to the amount of three thousand dollars, (\$3000,) wherefore he asks judgment for three thousand dollars.

A. N. RIDDLE,
W. H. JOHNSON, } *Atty's for Plaintiff.*
A. T. GOSHORN, }

State of Ohio, } ss.
Hamilton Co. }

Maria Steele, the next friend of Charles M. Steele, the aforesaid plaintiff, being sworn, says that she believes the statement of the foregoing petition to be true.

Sworn to by Maria Steele }
before me, and sub- } her
scribed in my presence, } Maria Steele
this 3d day of May, } mark.
1856.
[SEAL.] A. T. GOSHORN, N. P.

To this petition, the defendant, Prof. Robert S. Newton, filed the following answer.

Superior Court of Cincinnati.

CHARLES M. STEELE, an infant, by his next friend, MARIA STEELE, plaintiff, against R. S. NEWTON, M. D., defendant. } *Answer.*

The defendant, for answer to the petition in this case, says that he admits he is a physician and surgeon, and attended Charles M. Steele, for fracture and other injuries of the arm, as stated in the petition. Said Charles, after receiving the injury at the Methodist Book Concern, corner of Eighth and Main streets, Cincinnati, was conveyed to a boarding house on College street, when the defendant was called to see him by a Mr. Hunter, a hand work-

ing in the Book Concern, who assisted to remove him to the house on College street.

When the defendant first saw the patient, which he supposes from the information he received was from one to two hours after the injury was received, the arm was very much swollen, and so painful that the patient was in slight convulsions. Defendant stated at the time, to the person who called him and those who were present, as well as the boy himself, that, from the nature of the fracture and the injury to the nervous ligaments and bloodvessels, there was danger that he would have lock-jaw, or that mortification might ensue; and, if he escaped these, there was danger of the elbow joint becoming stiffened, and his being rendered a cripple for life. At the urgent request of said Hunter and the boy himself, defendant agreed to set the arm, and do the best he could for him. He accordingly set and dressed the arm. He was then removed to the residence of his mother, the said Maria Steele, on Kemble street, where the defendant called to see him the next day.

The injury was a very serious one, and one of the most difficult in surgery to manage. When defendant called, as just stated, at the mother's residence, he explained to her and to the boy himself the difficulty of the case, and told them he would have nothing further to do with it except upon their responsibility, he (the defendant) not being liable for the result. Both the mother and son assented to this, and urged the defendant to undertake the case. The mother at the same time stated that she was poor and unable to make the defendant any compensation for his services, and he agreed to manage the case gratuitously. He has never made any charge for his services, and never received or expected to receive any compensation therefor. When said Hunter first called upon him he made no offer or agreement to recompense him, but simply acted as any third person would have done in such an emergency in sending for a physician. Defendant treated the case for some eight or nine months. He denies that there was any negligence on his part, or any injury to the patient arising from negligence or unskillfulness.

On the contrary the defendant succeeded better with the case than he expected, and than the most skillful surgeon could have expected to do. The bone was healed, the bandages were removed, and the defendant was treating it merely to remove the stiffness of the joint, at which time the tendons commenced contracting, pro-

ducing the deformity complained of in the petition. This was some ten months after the injury was received. This contraction resulted from the injury to the nerves and tendons at the time of the fracture, and was not in the slightest degree owing to the manner of treatment. Such contraction frequently ensues in case of injuries of this kind as well as of other descriptions, and cannot be either anticipated with any certainty, or guarded against. The deformity could be removed by a simple surgical operation. Defendant states that he was not in any manner in fault in causing the injury complained of, and therefore prays judgment.

KETCHUM & HEADINGTON,
Attys for Defendant.

State of Ohio, }
Hamilton Co. } ss.

Robert S. Newton being sworn, says that he believes the statements of the foregoing answer to be true. R. S. NEWTON.

Subscribed in my presence, and sworn to before me, by Robert S. Newton, this 9th day of August, 1856.

{ SEAL. } Wm. KIRK, N. P.,
in and for Hamilton Co.

The boy, Charles M. Steele, appears to be about fourteen years of age, with a fair constitution of the sanguine lymphatic class. As he appeared in court there was nothing remarkable about him, except his left arm, and this would not have been noticed, unless attention had been called to it. The cuff of the coat sleeve hid very nearly the hand, which, if seen, would hardly have fixed attention, as the contraction of the fingers was not so great as to close the hand more than is customary with those who walk with the hands swinging by the side. When stripped for inspection it was found that the motion of the elbow joint was as perfect as in the sound arm. There was a visible decrease in the muscles of the fore arm, and partial contraction of the fingers. He stated that the sensibility of the arm was impaired so much that he sometimes scratched his hand so as to make it bleed without being aware of the injury. The arm was minutely examined by several surgeons, who had been summoned, as experts, to testify in the case. We proceed to an exhibition of the evidence in the case.

Charles M. Steele called—Testifies that he is the boy who fell from a window of the stable of the "Methodist Book Concern," on the 22d day of September, 1854. Previous to the fall, his arm was as perfect as the other, but it was broken in his fall from the window. He fell out head foremost, and caught on his hands. He was taken up by Mr. Hunter, who also worked in the Book Concern, and conducted to Mr. Hunter's boarding house on College street. He walked from the place of the accident (corner of Eighth and Main sts.) to the boarding house on College street, Mr. Hunter holding his arm. Mr. Hunter called in Dr. Newton, who proceeded to set the arm in the presence of Hunter, Faral and Laws. It was about half-past one o'clock when Dr. Newton dressed it. Skin of the arm was not broken when Dr. Newton first set it on College street. The arm was set and bandaged, then a splint was put on the inside of the arm, and the arm was flexed to an angle of 45°. He heard nothing of Dr. Newton treating him as a charity patient, and recollects nothing being said of compensation in his presence. He was removed to his mother's house on Kemble street, where he was visited by Dr. Newton next morning. His arm was then painful, and swollen, and red, and the hand was purple. At this time there had been no attempt to keep the palm and fingers straightened to a parallel with the arm. The splint came only to the wrist, and blisters had risen over nearly the entire surface of the arm before the Doctor came next morning. Dr. Newton dressed his arm on the morning of the 23d September, at his mother's house, where he came daily for several days, and was punctual in his attendance for one and a half or two weeks. Dr. Newton told him how to treat it, and he followed the directions. His mother also heard the directions, and nursed him while he needed attention. He heard nothing said of compensation, at his mother's house or elsewhere. His mother was able to pay. Says he can use his arm a little, but not for heavy work.

At the time of the accident he was employed as a paper folder in the Methodist Book Concern; he has since been engaged as a runner in Mr. Jones' store on Fourth street. Dr. Newton also treated his arm at his (Newton's) office, and completed it at the Clinical Institute, corner of Sixth and John streets. [This is the hospital department of the Eclectic Medical Institute.] Witness says he attended this institution twice a week for a few weeks, then once a week for some months. He went to Dr. Newton's office on one occasion, and the Doctor told him to come next day and have it dressed. He went on the next day, which was Sunday, but did not find the Doctor in, and went again on Monday, when he was sent to the Clinic, where it was dressed by the attendants. It was then offensive to the sense of smell, and had been when Dr. Newton put him off, though he had neglected to tell the Doctor that it was in such a condition.

Cross-examined.—Says he fell from first window of the stable, of about five feet elevation. He walked about three squares to the place of dressing on College street. He was playing in the stable, and jumped or fell out. His arm was bent back, but he could not tell how it was broken. The place he was conveyed to was on College street, between Sixth and Seventh streets, about half a square from Dr. Newton's office. He walked, and Mr. Hunter held his arm. The Doctor came to dress it about one hour after the accident; before he came, the sleeve had not been stripped off. The arm was then straight, but very painful—could not say whether he could hold it in a bent position or not. The Doctor pulled it when he began to set it, and when he tried to bend it, it was very painful. He did not feel the end of the bone. Mr. Hunter held his arm while the Doctor was dressing it, and he remembers having heard the Doctor tell Hunter that it was a bad break. He was crying when Dr. Newton came in, but does not know whether it was from pain or fear. When Dr. Newton first came in, he had no instruments; he

set the arm, laid it on his (Charles') breast, and then went to his office after a splint and bandage, when he completed the setting. The Doctor set it before he went away to his office for instruments, by placing it in the right position. Dr. Newton told him it would soon get well, but told Mr. Hunter it was a bad fracture. Called to see me on Kemble street next morning, and continued to dress it for six or seven weeks. For a week and a half, he came every day or two; he came three days consecutively, then every alternate day. The splints he used did not keep the hand straight. Four or five weeks after the arm was broken, the splint was put on the outside of the arm. Said he complained to the Doctor that the bandage was too tight, and hurting him, but the Doctor refused to loosen it, and told him it must be tight. First he saw of blisters was on the morning of the 23d September. He did not know whether it was swelled or not when it was first dressed, but it was inflamed from the elbow down on the next morning, and also blistered. Did not hear the Doctor speak of continuing or discontinuing the case, but he recollects hearing him tell his mother that it was a dangerous fracture. The Doctor never refused the responsibility of the case. The sores remained on the arm for four or five weeks; when the splints were removed, the sores had scabs on them, which were dressed by the Doctor for two or three weeks. Went to the office to have his arm dressed two or three times a week for two or three weeks. The arm was dressed only a short time at the Clinic—perhaps two or three weeks before the splint was removed. He thinks the bone was broken above the elbow, not below. Sensation tolerably good, though not so good as before the fracture. Dr. N. treated his arm two or three weeks after the splint was removed. The Doctor also gave him a liniment to rub it with, and told him to work the elbow joint daily. At first he could not straighten his arm, but it gradually improved. The stiffness of the fingers was first observed some six or seven weeks after the occurrence of the injury, or when

the splint was removed. In January, 1855, Dr. Latta took charge of the case, treating it at his office twice a week for a long time. Dr. Latta replaced the splints, and straightened the hand, but had to desist, as it re-induced the sores. Dr. Latta straightened the first joint of the fingers a little, but not the second. The sores on the hand were not like those on the arm. The hand was very red, but white and sore where the splints came in contact with it. The offensive odor, when first noticed, continued three or four days, and on the second occasion, from Sunday until Tuesday. The sores commenced drying up before Dr. Newton removed the splint. The Doctor cut the blisters open, but they came out again; and, to cure them, the Doctor gave him an ointment.

John H. Faral, called. — Testifies that he knows the boy, Charles M. Steele, and saw him on the day he broke his arm. He was present when Dr. Newton set it. When the Doctor came in the boy was lying on the bed, but was not crying, though he was in some pain. Hunter is a printer whom he knows by sight. Doctor Newton said it was a bad fracture, but I heard nothing said of its being a charity case. The Doctor had a splint when he came in, though I think he had been in, before I came. He saw Charley frequently afterwards; does not know where Hunter is.

Cross-examined.—Do not know certainly whether Doctor Newton had been there before or not, but thinks he had been there. It took the Doctor nearly half an hour to set and dress the arm. He remained until it was finished. The boy complained when the Doctor moved the arm. Mr. Hunter was there when I arrived, and remained till after I left.

Mrs. Maria Steele, called. — Testifies that she is the mother of the boy who had his arm broken at the Methodist Book Concern, on the 22d of September, 1854. Dr. Newton treated him at her house for a week and a half. Charley then went to Dr. Newton's office. She never saw Dr. Newton before he came

to her house on the morning of the 23d September. He told her it was a bad fracture, and must be treated with care. He said it would require three or four weeks to effect a cure. The boy was very careful and followed the directions. Nothing was said of compensation at any time; she was able and prepared to pay the bill, and had always expected to do so. She noticed several large blisters on his hand next morning. The splint came only to the wrist, extending back to, and above, the elbow; the hand, however, was included in the bandage. The hand hung down. The Doctor afterwards put on another splint. The arm at times was offensive, and I told him to go to Dr. Newton's office and get it dressed, as he was able to walk about. The arm became offensive about one and a half weeks after it was first dressed. During the first week the Doctor came Saturday, Sunday and Monday, but cannot say whether he came regularly or not after that.

Cross-examined.—The Doctor came to my house on the morning after the accident, having Dr. Freeman with him. They remained about half an hour, dressing the arm; during their stay they did not converse with her. The Doctor said it was a bad fracture, and that it would require three or four weeks to effect a cure, or to knit. We had no other conversation. Dr. Newton did not say that he would hold the arm until I could send for another physician. She did not depend on Charley for a support; never said so. She did not remember telling Dr. Newton to do the best he could. She had constantly noticed the condition of the hand, and that it was hanging down, but could not say when the stiffness began. Noticed that the hand was cold; [here witness was much confused,] felt his hand after the bandage was removed, but can't say how long after. The fingers were worse then than now. They became more sensible after he went to Dr. Latta, but thinks they have relapsed into their former condition of insensibility.

Re-examined.—Dr. Newton never asked me to get another or consulting physician. He brought Dr. Freeman and Dr. Latta to see the patient of his own accord.

Prof. R. D. Mussey called.—Testified that he had practiced medicine and surgery more than fifty years. He had examined the boy's arm and found it withered, and the general sensibility much impaired—results arising from diminished innervation. He should infer that the blood-vessels had been too much constricted by the bandages, thus obstructing the proper circulation of the blood in the limb. Cannot say that this was positively the case. These results might have been induced by injury to the median nerve, but thinks the circulation was obstructed, and in consequence the blisters appeared. Fractures in the lower end of the humerus are very difficult to treat, and for which there is a variety of plans. He should have kept the forearm flexed on the upper arm, at a right angle, and been careful not to dress it too tightly. He should use some sort of a splint, though he could not at present specify the exact kind. Some surgeons, in dressing such fractures, leave the hand bent, while others straighten it. He was of opinion that, if a fracture had existed in the case, it was probably an oblique fracture, including the internal condyle. The elbow joint is now in good condition, having its natural motions in all directions. He has not, however, seen similar results from such a fracture. The ulnar nerve, as well as the median, may have been injured.

Cross-examined.—He was not positive as to the direction of the fracture, nor was it always easy to judge so as to form a positive opinion. All fractures of the os humeri, running into the elbow joint, are difficult of cure. He was of the opinion that a permanent injury, or a degree of deformity, is sustained in a majority of cases. The vesications in this case may be accounted for by the injury done to the nerves, but thinks that tight bandages are oftener the causes of such results. Different surgeons adopt different plans of treatment. He

knew an eminent surgeon in Kentucky who did not use splints at all, in cases of fracture, but he was of the opinion that the best surgeons, at the present time, employ splints.

He has seen cases similar to this—had seen a case some years ago where the forearm mortified in consequence of having been too tightly bandaged. Thinks that in this case the dressings may have been too tight. He was of the opinion that partial paralysis might be induced by too tight dressings, without gangrene necessarily ensuing. [Prof. Mussey here cited a case in which a permanently enfeebled and withered arm was caused by dressings for a broken collar bone, in which the arm was bound too tight upon a compress placed between it and the body; this occurred without vesication or gangrene. Erysipelas may follow such injuries, exhibiting itself in from twenty-four to seventy-two hours.

Re-examined.—He was of the opinion that the injury in *this* case is permanent; the fingers can be straightened by an operation, but without any special benefit to the boy.

Sally Ann Massey called.—Testified that she knows the boy Charles Steele, and his mother Maria Steele. Was at Mrs. Steele's house nearly every day during his confinement, and saw the boy, but did not see Dr. Freeman there. She noticed that the arm was in a bad condition. She don't remember to have noticed the bandage particularly. One and a half weeks after the injury the hand was purple. She had heard the boy say it hurt him very much; though he did not complain of the bandage particularly. The odor of the arm was very offensive. The boy carried his arm in a sling, with the hand hanging down. He was nursed by his mother, who is a widow, and then lived on Kemble street. She has a little girl and a larger boy. She thought Mrs. Steele able to pay the bill, and she (Mrs. Steele,) had told her she was prepared to do so.

Cross-examined.—The young man present is the larger one whom I referred to.

I was at Mrs. Steele's house a few minutes on the evening of the second day after Charles had his arm broken.

Prof. Jesse Judkins called.—Testifies that he is a physician and surgeon, and has practiced his profession for eighteen years, a part of the time as a teacher of anatomy and physiology. He did not hear the boy testify, but he had examined the condition of the arm. If there has been a fracture of the arm the reparation has been most complete. The wasting or withering may be a result of muscular changes or of nervous sympathy. He was of the opinion that the inflammation had been very intense. The capillary circulation may have been arrested by too tight bandages, the result of which would have been inflammation, erysipelas and gangrene. When the arm was so very offensive, there must have been some degree of gangrene. The blisters showed intense inflammation. He was of the opinion that the arm may yet improve. The union of fractures in young persons may be very complete. Thinks that in such a fracture, the arm should be flexed to right angles when set. Injuries of the elbow joint are always attended with complications, the nature of which cannot be always easily determined. He could not say from the present condition, what had been the exact nature of the complications in this case. Tight bandages tend to prevent a return of blood from the extremities back to the heart. The erysipelas complained of was, in all probability, induced by too tight bandages. Gangrenous states of a part are always offensive after sloughing has commenced. The surgeon should see such a patient at intervals ranging from two days to one week. Thought it would be imprudent to send such a patient away from his office without examining the state of the arm. The nurse, however, must attend to the dressing.

Cross-examined.—He thinks this patient was seen often enough. A simple fracture would require less attention. Does not think that the injury of the median nerve alone caused the difficulty here presented,

though it may have been the primary cause; the muscles and ligaments might also have been injured, and thus have assisted in securing the present results. Thinks the bandages might have caused the erysipelas. When called to such a case, the bones must be put in position; the arm being flexed to right angles; the splints to be adjusted, and the bandages applied. The bandages can not be put on tight enough to paralyze, without producing gangrene. The median nerve at this point, (entrance of the end of the fractured bone in its downward descent,) is deeply seated. The offensive odor of such cases may precede true gangrene. It will, however, be recognized as the peculiar odor accompanying erysipelas, and which is unlike that of gangrene. Simple vesication would give both a discharge and an odor. The difficulty of effecting a cure in such a case will depend on the amount of the tissues which have been destroyed or injured. He thought that a majority of fractures of the elbow joint were completely cured. He could not say whether, in this case, it was the muscles or nerves that were injured, but thinks the muscles sustained most damage. When elbow-joint fractures are complicated, then he thought that a majority were not cured completely. Thinks that the end of the fractured bone was here thrust forward into the tissues of the anterior superior forearm.

Prof. T. Wood, called.—Testified that he was a practicing surgeon, and now holds a professorship of anatomy. He had heard a part of the boy's testimony. He thinks the present condition of the arm is the result of bandages too tightly applied. He could not discover evidence of there having been a fracture, and if there had been, he had never met with a case where the cure was so perfect as in this case. The median nerve did not supply all the fingers. He had never met with such a result as this, except it had arisen from bandages too tightly applied. He never knew erysipelas to occur as the result of such injuries, where no external opening had been made

at the seat of the fracture. Gangrene may, and sometimes does, occur without erysipelas. In this case, he thinks there has been extensive inflammation, and that the muscles have grown together. He was in the habit of examining similar cases once in every twenty-four hours, to see that all things were well, for a period of one week. He thought the purple color of the hand arose from compression; the blistering being one of the first results of such compression. He uses for such fractures the angular splints, but paste-boards may be used. He always steadied the hand in dressing, and generally leaves it straight. The contractions in this arm do not result as a necessity from tight bandages. The contractions usually come on after the parts have been healed up. The chief reason for preferring long splints is to prevent motion of the parts. He had never seen blisters occur unaccompanied by compression. He had seen two similar cases the past summer. He thought that before the muscles of the forearm could be materially injured by the end of the bone, the artery would have been cut off. Erysipelas may occur from very slight wounds; often a simple scratch of a pin on the arm will induce it; so, too, may fracture and tight bandages. Short splints only serve to keep the parts together. Paralysis may be induced without gangrene, provided the pressure be continued for a great length of time. No injuries of the elbow joint are so completely cured as to leave no trace of them. He did not find satisfactory evidence that the bone had been broken. He had known wasting of the arm to occur where the bone had sustained no injury. Paralysis generally results from injury to the nervous centers.

Prof. G. C. Blackman called.—Testifies that he is the Professor of Surgery in the Ohio Medical College, and Surgeon to the Commercial Hospital. He had both examined the boy's arm and heard his statement, but from those sources had formed no positive opinion. The paralysis may be the result of the shock sustained at the

time of the accident, or it may be the result of too tight bandaging, or from having retained the arm too long in one position. The blisters common to such fractures may follow in less than 24 hours where there is no dressing, and may be the result of the violence done to the soft parts at the time of the injury. If erysipelas was, at the time, epidemic, it would almost certainly follow as one of the phases of such a case as the one under consideration, or even a less injury. He had no positive proof that the arm had been fractured, but he thought there had been a fracture of the humerus involving the inner condyle and injuring the ulnar nerve. These are bad fractures, and their true character is difficult to detect. He thought the ends of the bones should have been put together immediately, inflammation or not. He had seen discolorations of soft parts where the ends of the bones had done violence to the soft tissues. The bandages in such oblique fractures must be tied rather tightly, and the surgeon in setting the arm may use either the wooden splints or pasteboards. In setting the arm he prefers to steady the hand. He had known mortification occur in 24 hours from tight bandages. The blisters may have been the result of such bandages; he would not attach much importance to the tightness of the bandage, unless tight enough to induce excessive inflammation. It was not customary to change the bandages oftener than once in twenty-four hours.

Cross-examined.—He thought the tissues of the joint had been injured, and the results in this case may depend on such injury, and not on tight bandages. Children are very apt to complain of the tightness of the bandage, even when it is not too tight—could not say that the bandages in the case of this boy had been too tight; the symptoms of the case do not prove that they were too tight. The paralysis and wasting may depend on other causes, and he was not willing to say that such had not been the case. In such fractures it is a very com-

mon result to have impaired motion. The experience of the oldest and ablest surgeons in both Europe and America show this to be the case. Professor Hamilton, of Buffalo, shows that a majority of such cases are attended with permanent injury of some sort, and all authors on the subject testify that an impaired condition results in a large majority, if not in all cases. He thinks that there was enough care shown by the surgeon in the treatment of this case. Conditions might arise which would cause him to remove the bandages entirely, as severe pain, inflammation, &c. The fracture should be kept in situ by bandages if possible, as the redisplacement of the ends would cause danger to the arm, for the point of the bone would be again thrust down into the soft parts, and get up a worse condition than ever.

Re-examined.—He had seen several cases similar to this, and these too had been under the care of the best surgeons. Indeed, he had some in his own practice. He considered the repair in this case very perfect; he considered it a fine sample of union, and he had seen greater paralysis arise from less injuries.

Dr. W. S. Latta called.—Testifies that he is acquainted with Charles M. Steele. He had seen the boy while under the treatment of Dr. R. S. Newton; first time, within three or four days after the accident. He visited the patient in company with Dr. Newton, and in doing so he had no other motive than to see the case, as Dr. Newton had represented it as one of peculiar interest. The arm was dressed by Dr. Newton in his presence. He had noticed that it was covered with vesicles, some of which had broken, and others were punctured by Dr. Newton. He had assisted to dress the arm but did not examine the joint particularly. The ends of the fractured bone seemed to be in apposition. He noticed no appearance of gangrene. There was nothing very peculiar about the forearm except the blisters. He did not remember to have seen any marked discoloration. Since then he had seen

the boy frequently, and heard both him and his mother say the arm was paralyzed. When he first heard this remark, the boy was attending Newton's Clinic Institute to have it treated. Patient was then turned over to him, and to arouse the vitality of the arm he had tried electricity. The sensibility was very much restored at the end of two weeks after he had begun to treat him, at the end of which time he undertook to straighten the fingers, but had to desist in consequence of the re-appearance of the erysipelas. He had applied the splint to straighten the fingers. He had bandaged the hand rather tightly, but from the nature of its application there was no interruption of the circulation. He observed the erysipelas within two or three days after he applied the splint and bandage. He thought there was a tendency to erysipelas in the arm at the time. He did not make immoderate pressure, yet the erysipelas was induced.

Cross-examined.—He had been practicing medicine three years. The blisters which appeared when the patient was being treated by him, were the same as those he had observed when the boy was under Dr. Newton's treatment.

Prof. R. S. Newton called.—Testified that he had been a practicing surgeon since 1841—fifteen years. Was now a Professor in the Electric Medical Institute, and surgeon to Newton's Clinic Institute. On the day set forth in the declaration, he was called by Mr. Hunter, and found the boy, Charles M. Steele, with his arm broken. He thought it a bad fracture, and asked Mr. Hunter who had sent for him. Mr. Hunter replied that he had come of his own accord, as he worked in the same office with the boy. He then told Mr. Hunter that he would rather not take the case. On examination he had found the humerus broken off obliquely, the end of the bone driven down into the hollow of the arm; the boy, at the same time, suffering very much. He could distinctly feel the end of the bone. The arm could not be straightened. He had experienced but little difficulty in setting it, but it was not so easy to

keep it in proper position, there being a constant tendency to slip down; hence, to prevent this, the bandages had to be applied firmly. The arm was much swollen at the joint, and all the bloodvessels of the arm seemed to be engorged, though not more than an hour had elapsed since the accident. The boy was crying when he went in, and exhibited more suffering than from a simple fracture. In such cases, most of the pain arises from injuries to the muscles, though some of the pain is to be attributed to the fractured bone itself. He first drew the point of the bones together and then bandaged the arm from the hand up, afterwards applying the splints, leaving the arm flexed to right angles. The splints are applied to prevent rotary motion. In this case more pressure was needed than in a simple transverse fracture, on account of its obliquity. The bandage was not tighter than he thought necessary. He had remarked to the boy, and those present at the time it was set, that the arm might be ankylosed, or that mortification might supervene. He had completed the dressing by 2 o'clock P. M. He visited the patient the following morning at 10 o'clock A. M., in company with Prof. Z. Freeman. The boy then said his arm was hurting him, and Dr. Freeman examined the bandage to see if it was too tight. On the removal of the dressings his arm was seen to be blistered. He then said to Mrs. Steele that it was a bad fracture, and that he would hold the arm until she could get her family physician or another surgeon, unless she would assume the responsibility of the case. She told him to go on and do the best he could. He had explained to her the dangers of such a fracture. A part of the arm and the hand was of a darkish red, but there were no indications of gangrene. After puncturing several of the blisters, he re-applied the bandages, and then put on two splints; one on the inside, and one on the outside of the arm. The bandage extended from the end of the fingers above the fracture, the hand being bandaged straight. One of the splints

was removed in a few days. When the long wooden joint splint was off of the inside he had an elastic splint on in its place, and a long wooden one on the outside. He had kept the fingers extended most of the time. The boy had never complained to him that the bandages were too tight. He treated the blisters with water dressings, and continued the splints four weeks or longer. The arm became offensive about one week after the accident. He had attended the boy at his mother's house on Kemble street about four weeks. The boy then came to his office a few times, but the arm did not then require much dressing. He had given an unusual amount of attention to the case. The contraction of the fingers began at the end of four weeks, but he had noticed such a tendency at the end of three weeks.

Cross-Examined.—He had never seen a more perfect cure, yet he never had a result like this. He did not believe a perfect cure had been reported of such a fracture, nor did he know of a result like this. He had taken the boy to the Clinic to exhibit his case, having had him under treatment altogether about seven months. He had never learned who the family physician of Mrs. Steele was, or that she had any. He had treated the case as a charity patient, never having made a charge against Mrs. Steele on his books.

Prof. A. H. Baker called.—Testified that he had been engaged in the practice of surgery for twenty-six years, and for seven years he had been a teacher, and was now Professor of Surgery in the Cincinnati College of Medicine and Surgery. He had known nothing of this case until to-day. The erysipelas spoken of was a result of inflammation, and that had been induced by injury done to the soft tissues. Thinks the ends of the bones had caused the inflammation. Inflammation gives rise to eleven or twelve products, (some of which the Professor here enumerated). He had known injuries of this kind, and now has a case which may result in paralysis. Erysipelas might follow such an injury in from ten to twenty-four hours.

In the majority of cases of this kind we have either total or partial ankylosis of the joint. He could not now speak with certainty of the character of this fracture, as the indications of the fracture in such a young patient may be so completely removed in eighteen months or two years that no mortal man can detect it. Doctor Newton stated that when he bandaged the arm he commenced at the tips of the fingers and continued it up above the point of fracture. The first he considered the most important bandage. Doctor Mott takes the position that a bandage cannot be applied too tight, provided it is not so tight as to produce mortification. The practice of Doctor Newton in this case was proper, and such as would have been followed by any judicious surgeon. The object of the bandage in such cases is, first, to make equal pressure, and secondly, to keep the parts in proper position. The splints are afterwards applied to prevent displacement. The Doctor's application of the splints and bandages was in accordance with the rules laid down for bandaging. The fracture was an oblique one, and one that it is difficult to retain in its proper position. If the bones cannot be retained in their proper place, in a compound fracture, it would be best not to bandage until the inflammation is reduced. If the sharp end of bone was allowed to re-slip into the soft tissues, injury and inflammatory action would ensue. He should in all such cases adjust the fracture at once. This was a complicated fracture, and not a compound fracture. Doctor Newton gave the case more attention than is usually given to fractures, and he considered that he was diligent in his attentions.

Cross-Examined.—The object of the bandage is, primarily to keep the parts in juxtaposition. In his experience of such fractures he had commonly found both the median and ulnar nerves more or less injured. Fractures of the upper arm occur mostly in the os humerus: bones of the fore arm much oftener broken in fractures of the superior extremities. In his practice the fractures of the fore arm were

more than double those above the elbow. He had seen a fracture very much like this. In this case the fracture was outside of the capsular ligaments. He had been in the practice of his profession in Cincinnati more than ten years, and had during that time treated many fractures of the arm. He had also had cases attended with erysipelatos inflammation in the fore arm. It would depend on the character of the erysipelas to enable him to say whether he would remove the bandages or not. There are forms of erysipelas which he would treat with bandages. He had not heard Professor Blackman's testimony. Blisters are not always evidence of erysipelas, but they always proceed from inflammation, and they may result from internal or external inflammation. He thought that where the bandage was well applied it would prevent congestion rather than promote it; in this opinion he might differ from other surgeons. In erysipelas the vesicles may take any direction; they are apt, however, to follow the outlines of bruises or pressure. Erysipelatos inflammation may appear in twenty-four hours. Generally where it appears, disappears, and then reappears it is caused by some peculiar diathesis of the system. Whether erysipelas can be induced in the system by bandaging or not is a question admitting of much discussion. The contraction of the flexor muscles would depend on various circumstances, extended over a considerable space of time. In this case there is some relief to the contraction by flexing the hand on the shoulder. The arm does not go back quite as much as the sound one. He had met with cases similar to this where the condyles were included, but he had not met with a case exactly like this in all respects. He had seen cases of oblique fracture where the union was as perfect as in this instance. The union is often so perfect that the fracture is to be detected only by post mortem examination. Nothing but the vigilance said to have been practiced by Doctor Newton could have retained the parts in proper position. In

a case like this where the broken bones had been thrust down into the soft parts, the injury would be such as to make a perfect cure very difficult. No serious difficulty would result from the postponement of the dressings one day, three or four weeks after the accident. The postponement of any dressing at any time would not have produced such serious results as are here presented. The blood vessel at the point of injury is a firm texture, and would not be so easily injured as the median nerve by the same violence.

Prof. Z. Freeman called.—Testified that he had been engaged in the practice of medicine and surgery for the past eight years, and is now Professor of Surgery in the Eclectic Medical Institute. He saw Charles Steele and his mother the next morning after the accident, at Mrs. Steele's residence on Kemble street, in company with Dr. Newton. He was introduced to the boy and his mother by Dr. N. The boy seemed to be in some pain. Upon examination he found the arm somewhat blistered, with blisters between the fingers. The hand was of a light purple color; the arm had a similar appearance to the hand after the bandage was unrolled; there were some blisters on the arm. The bandage was not, in his judgment, too tight. The elbow was rather of a purple color, which he thought a natural consequence, when told by Dr. Newton that the fracture was an oblique one of the lower end of the humerus, the rough end of which had been thrust down into the soft tissues. The bandage had been commenced at the tips of the fingers, and evenly rolled upwards, making an even pressure over the entire surface. He had examined the condyles, but had found no fracture—the fracture being above the condyles. He was perfectly satisfied as to the true character of the fracture. Mrs. Steele was weeping so much at the time, that he could not but sympathize with her. She said she depended somewhat on Charley for her maintenance. It was after the bandage had been removed that Dr. Newton proposed to hold the arm until Mrs. Steele could get another sur-

geon, or her family physician, to treat the case. She declined calling in any other physician, and both her and the boy requested Dr. Newton to go on and treat the case. The bandage was then applied over the arm and around the splints, which served to keep the arm in a proper and easy position. After this visit, he did not see the boy again until he was presented at the Clinic. It then had a different splint on. The bandage, when re-applied at the time of his first visit, was not put on so tight as the first one, because the arm was somewhat swollen, and both he and Dr. Newton were of the opinion that the swelling might be somewhat increased. When the boy was first presented at the Clinic, the elbow joint was stiff, and the arm presented a red and smooth appearance, and the fingers were slightly contracted. The sores on the arm were old sores, but others came out during the time of his attendance. To remove these sores the mild zinc ointment was applied. He had noticed the bandages on the arm when the boy first came to the Clinic, and he considered them quite sufficient. He sometimes dressed the arm himself during the boy's attendance. In order to keep the parts in proper position, it is necessary to keep the bandages tight, and the more so if it is an oblique fracture; the ends of the fractured bones in such a case being more easily displaced, than in a simple transverse fracture. He had been informed of the character of the fracture, in the first instance, by Dr. Newton, and then he examined it for himself. He was satisfied that it was an oblique fracture of the humerus above the condyles. There was some swelling at the elbow joint, but no echymose appearance. It is not common, though sometimes the case, for erysipelas to present itself in cases of fracture. The blisters in this case were, in his opinion, the result of the attending erysipelas. Blisters might, however, be produced by inflammation of the skin. The present contracted condition of the fingers may have been produced by injury to the median nerve. The nerve being injured, would cease to perform its natural

functions, and there would not be furnished to the flexor muscles the necessary amount of vitality.

Dr. James L. Van Ingen intruded himself as a witness or expert, but he exhibited such a marked ignorance of surgery and surgical science, that his contradictory testimony is dispensed with—he evidently having had a purpose to subserve by testifying in the case.

The testimony being closed, the case was argued for the plaintiff by Judge Johnson and Messrs. Riddle and Goshorn, on the third day, and for the defense on the fourth day, by Mr. Headington and Judge Hoadly. The reporter begs to call attention to a few of the points argued by the latter gentlemen.

Mr. Headington spoke of the embarrassment of the case, and said that if it was a mere question of surgical practice, he should despair of throwing any light upon the subject. And while the medical question might be difficult, the legal question was exceedingly simple and plain; and by properly understanding it, the jury might avoid the necessity of pursuing the surgical question, which, if made ever so clear to surgeons, could only involve the legal question, as presented to the court, in mazes of uncertainty. To sum up the positions, they may thus be stated:

1. What is the responsibility assumed by a physician or surgeon in taking charge of a case? He does not undertake to effect a cure, in the same sense that a lawyer may undertake to gain a case for a client. If the law was so unreasonable as to require this, it would deter competent persons from practicing, and only the reckless and unskillful, who could not see the danger, would engage in the practice of the medical profession. It would prevent that kind of practice which consists in a choice of two evils.

2. The law requires the surgeon to possess *ordinary skill*, to be determined by the treatment of the particular case in hand, and

3. To exercise *ordinary care and diligence* in attending upon and treating the case; and therefore,

4. In order to make out a case, entitling a plaintiff to recover against a physician, he must show:

That in some respect, which he must be able to point out, his treatment was such, that a majority of physicians of ordinary skill would, *at the time*, have pronounced it improper, (not that they may see afterward that it was so,) or that he did not bestow that amount of attention and care upon the case, which a majority of physicians of ordinary carefulness and skill would have done, and he must satisfy the jury that from one or the other of these causes, and from *no other*, an injury ensued.

These principles of law are so plain that they will relieve the jury from the main difficulty in the case, which is to determine the *cause of the injury complained of*. This involves the very difficult process of reasoning from effect to cause, or vice versa, where the *connection* between them is *involved in uncertainty and doubt*. After thousands of years of advancement medical science is but an approximation to the truth; nothing in its results can be known with positive certainty. New principles are being continually discovered—unexpected results are being constantly encountered. No two cases are in all respects exactly alike, and the treatment must vary accordingly.

The arguments of both Mr. Headington and Judge Hoadley were sound and convincing. The arguments having been closed, Judge Spencer delivered an elaborate charge to the jury, setting forth the rights and obligations of the respective parties, of which our space will not admit a full report. The judge remarked:

"The action, it will be observed, is not founded upon any *special* engagement, on the part of the defendant, to effect a cure in any event, or to employ any particular degree of skill and care for that end, or any particular treatment. But it is founded on a general engagement to render his services in the case as physician and surgeon; in which event, the defendant was bound in law, to exercise ordinary care, skill, and attention, in effecting a cure; nothing more.

That is, such as men of ordinary prudence, diligence, and intelligence, in the same profession, would apply in like cases.

"To enable the plaintiff, then, to recover, he must establish, to your satisfaction, at least two propositions: 1st. That the permanent injury complained of was such as might have been prevented by a proper treatment of the case, or was the result of, or materially contributed to by, the mode of treatment adopted by the defendant. 2d. That the mode of treatment resorted to was improper and unusual, accompanied by less skill, care, and attention, than are ordinarily bestowed in like cases.

"Testimony has been offered on the part of the plaintiff to show an improper adjustment of splints at different times, and a want of opportune dressings on one or two occasions; but any neglect, on either of these accounts, is not now seriously relied upon by the plaintiff to charge defendant. The theory upon which the plaintiff's case is founded, and upon which a recovery is expected, is, in substance, this; That the contraction of the fingers, and withering or shrinking of the plaintiff's forearm, result from a weak or paralyzed condition of its nervas, muscles, and tendons, or some of them, brought about by a high degree of inflammation in the forearm, either of longer or shorter duration—an inflammation either superinduced or greatly aggravated by an improper bandaging of the arm, by the defendant, during his course of treatment, and especially on the first application of the bandage. The evidence in support of this theory consists first, of the statements made by the boy himself, corroborated by his mother and another witness, that on the day after the accident, he felt the bandages to be *uncomfortably tight*, and so informed the defendant; that, on removing the bandages, the hand and arm were found to be of a purplish color, and were covered with large, white blisters, which, in time, became sores, and continued for some weeks during the treatment. Second, the testimony of experts as to the indications furnished by these appearances, and the probable effect of the bandage application."

Here the Court reviewed the testimony of the several witnesses, on both sides of the case, in detail, summing up as follows:

"Thus, it will be observed, of the plaintiff's witnesses, one (Dr. Wood) expresses a *positive*, and another (Dr. Mussey) a *hesitating* opinion, that the inflammation causing the injury was occasioned by over tight bandaging; two (Drs. Judkins and Van Ingen) give no particular opinion upon the subject, and the fifth (Dr. Blackman) declaring that from the evidence he *can not* say that the application of the bandages was too tight, or that the injury resulted from any such cause; whilst they all agree, in common with the defendant's witnesses, that the character of the original injury was such, that it was sufficient of itself to produce the appearances indicated, and the unhappy consequences which followed; that it was exceedingly difficult of treatment, and, in a majority of cases, might be expected to terminate, in some way, unfavorably. On the part of the defendant, Dr. Baker expresses the opinion, that the bandaging was not too tight, the treatment of the case was proper, and the injury sustained the natural result of the fracture itself. Dr. Freeman, who examined in person the first or original bandage, was satisfied it had been properly put on, and was not too tight, and approved of the second dressing. And the defendant himself testifies that he applied the bandages carefully, from time to time, and that, in his judgment, they were necessary, and not tighter than the case required. Among these respectable witness, it is not for the Court to intimate upon whose skill and judgment the greatest reliance can be placed; but we may with propriety say, that an honest opinion, founded upon a practical and personal observation, is much more likely to be accurate, than one founded upon speculation and the observation of others. It is due to the professional man, who has treated a case, in other respects fairly and attentively, that a candid and favorable consideration should be given to the judgment which he may form of his duty during the progress of that case; otherwise no physician or surgeon would dare to undertake, or be safe in the performance of his undertaking. In a case otherwise doubtful, this consideration alone should preponderate in his favor.

"Upon the whole, gentlemen, we declare that to entitle the plaintiff to a verdict, you must be satisfied from this evidence, that the injury of which he complains, was not the natural result of the original accident,

but was distinctly traceable to the mode of treatment pursued by the defendant; in the adoption and continuance of which, he did not apply that skill and care which men of ordinary intelligence and prudence, as physicians and surgeons, would have applied. Should this be your conviction, the plaintiff must recover such damages as will compensate him for the injury sustained, not exceeding the amount claimed. Should it be otherwise, or should you not be able to trace the cause of this injury, or your minds be unable to decide from the evidence whether the defendant has been in fault, according to the rule stated, your verdict should be for the defendant."

Superior Court of Cincinnati.

CHARLES M. STEELE, by his next friend,
MARIA STEELE, plaintiff, against R. S.
NEWTON, defendant.

Action to recover damages for improper treatment of fracture as physician and surgeon. Damages laid at \$3000.

COPY OF THE VERDICT. — Tuesday, November 25, 1856. Court Room, No. 3, Hon. O. M. Spencer Judge.—And now come again the said parties and the said jury, and the said jury having heard the testimony, the arguments of counsel, and the charge of the Court, and having retired under the care of the Sheriff, to deliberate, return into court with their verdict in writing, signed by their foreman, and say: "We, the jury, find the issue joined for the defendant."—*Journal*, page 2152.

COPY OF THE JUDGMENT.—November 7, 1856. Court Room, No. 3, Hon. O. M. Spencer, Judge.—"Therefore, it is considered by the Court, that the said defendant go hence without day, and recover of the said plaintiff his costs herein taxed."
Costs, \$53.36.

The State of Ohio,
Hamilton County, }
The City of Cincinnati, } *sci. The Superior Court of Cin'ti.*

I, Thomas Spooner, Clerk of the said court, do certify that the foregoing transcript contains a true copy of the verdict and judgment, rendered in said court at the November term, A. D. 1856, in the cause therein stated, as appears from the journal of said court in my office.

Witness my hand and the seal
{ L. S. } of said court, at Cincinnati, this
16th day of December, A. D. 1856.

THOS SPOONER, Clerk,
Per E. P. CRANCH, Deputy.